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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/863,585	05/16/2001	Phyllis Leithem	177079-00058	1886
31013	7590	06/25/2004	EXAMINER	
KRAMER LEVIN NAFTALIS & FRANKEL LLP INTELLECTUAL PROPERTY DEPARTMENT 919 THIRD AVENUE NEW YORK, NY 10022			STEPHENS, JACQUELINE F	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 06/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/863,585

Applicant(s)

LEITHEM ET AL.

Examiner

Jacqueline F Stephens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2004.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 104 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 104 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see page 6, paragraph 2 through page 7, paragraph 1, filed 3/22/04, with respect to the rejection(s) of claim(s) 104 under 102(b) as being anticipated by Chatterjee have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Novak USPN 2083575.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

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consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claim 104 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pociluyko USPN 3658064 in view of Novak USPN 2083575.

Pociluyko discloses an absorbent article comprising at least one fluid permeable topsheet layer **51** and at least one substantially fluid impermeable backsheet layer **10** and a sublayer material **50** between the topsheet layer and the backsheet layer (Pociluyko Figures 6 and 7). The sublayer material **50** of Pociluyko comprises a fluff layer **52**. Pociluyko discloses fluff pulp is desired because of its low cost and high absorptive capacity (Pociluyko col. 4, lines 44-54). Pociluyko is silent as to the method of manufacturing the fluff pulp.

Novak discloses a method for making fluff pulp capable of being used for personal hygiene articles, due to its soft and absorbent characteristics (Novak page 2, col. 1, lines 15-20). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the invention of Pociluyko with a fluff pulp made by the method taught in Novak. Doing so would provide an absorbent product containing fluff pulp material that 1) is very soft, absorbent, and easily saturated; and 2) will not deteriorate in storage and can be conveniently shipped to distant point in the same way as in the case of commercial wet pulp (Novak page 1, col. 1, lines 6-12; page 2, col. 2, lines 21-26).

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The method of making the absorbent article of Pociluyko/Novak comprises treating a wood fiber pulp containing wood fibers with a base at a temperature range of 15° – 60° C (Novak page 1, col. 1, lines 12-40). The examiner interprets the lower range of the temperature, 15° C, to be cold as 'cold' is a relative term. Therefore, relative to a boiling or hot caustic solution, a temperature of 15° C is considered cold by the examiner. Novak further discloses fluffing the treated wood fiber pulp to form an absorbent sublayer material comprised of fluffed base-treated wood fiber pulp (Novak page 1, col. 2, line 54 through page 2, col. 1, line 20; page 2, col. 1, line 75- col. 2, line 11). Pociluyko/Novak discloses the sublayer material contains 35-100% fluff (Pociluyko col. 4, lines 54-57). The treated wood fiber pulp of Pociluyko/Novak is not subjected to chemical crosslinking.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (703) 308-8320. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703)305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jacqueline F Stephens
Examiner
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June 24, 2004